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Trimac Transportation Services (Western) Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DOUGLAS ROBERTS,	) Case No. 5:12-cv-05302-HRL
	)
Plaintiff,	) Assigned to the Honorable Howard R. Lloyd
	)
vs.	) <b>DEFENDANT TRIMAC TRANSPORTATION</b>
	) <b>SERVICES (WESTERN) INC.'S NOTICE OF</b>
TRIMAC TRANSPORTATION SERVICES	) <b>MOTION AND MOTION FOR PARTIAL</b>
(WESTERN) INC., a Delaware Corporation,	) <b>SUMMARY JUDGMENT ON PLAINTIFF'S</b>
	) <b>MEAL BREAK CLAIMS</b>
Defendant.	)
	) Date: August 27, 2013
	) Time: 10:00 a.m.
	) Dept: #2, Fifth Floor
	) Judge: Howard R. Lloyd
	)

**TO PLAINTIFF DOUGLAS ROBERTS AND HIS ATTORNEY OF RECORD:**

**PLEASE TAKE NOTICE** that on August 27, 2013, at 10:00 a.m., or as soon thereafter as counsel may be heard in Department #2, Fifth Floor of the above-titled Court, located at 280 South 1st Street, San Jose, California, 95113, Defendant Trimac Transportation Services (Western) Inc. will

1 and hereby does move this Court for an Order for Summary Judgment on the following claims  
2 asserted by Plaintiff:

- 3 1. Plaintiff's First Cause of Action for failure to provide adequate meal periods under  
4 California law; and
- 5 2. Plaintiff's Fourth Cause of Action under California's Bus. and Prof. Code Section  
6 17200 to the extent it is derivative of Plaintiff's First Cause of Action.

7 This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points  
8 and Authorities, the papers and records on file with this Court, and other such oral and documentary  
9 evidence as may be presented to the Court at or prior to the hearing on the Motion.

10  
11 DATED: July 23, 2013

/s/Christopher J. Eckhart

Christopher J. Eckhart

Christopher C. McNatt, Jr.

13 Attorneys for Defendant,  
14 Trimac Transportation Services  
15 (Western) Inc.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
I.    INTRODUCTION .....	1
II.   STATEMENT OF ISSUES TO BE DECIDED .....	1
III.  BACKGROUND FACTS .....	1
IV.  ARGUMENT .....	4
A.    Standard .....	4
B.    Roberts’ Meal Break Claim Fails As A Matter Of Law .....	5
C.    Roberts’ Derivative UCL Claim Necessarily Fails.....	7
V.   CONCLUSION.....	8

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-49 (1986).....	4
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4 <sup>th</sup> 1004, 1038-40, 139 Cal.Rptr.3d 315, 273 P.3d 4513 (2012).....	5
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 323, 325 (1986) .....	4
<i>Devereaux v. Abbey</i> , 263 F.3d 1070, 1076 (9th Cir. 2001) .....	4
<i>Nissan Fire &amp; Marine Ins. Co., Ltd. v. Fritz Companies, Inc.</i> , 210 F.3d 1099, 1102 (9th Cir. 2000).....	4
<i>Plaisted v. Dress Barn, Inc.</i> , 2013 WL 300913, at *2-4 (C.D. Cal. Jan. 25, 2013) .....	7
<i>Reece v. Unitrin Auto and Home Ins. Co.</i> , Cause No. 5:11-cv-03960 EJD, 2013 WL 2454452, at *1, *5-*6 (N.D. Cal. January 22, 2013).....	5, 6, 7

### **Codes**

Cal. Lab. Code § 512 .....	1, 5
Cal. Code Regs. tit. 8, § 11090 .....	1, 5
Cal. Bus. & Prof. Code §§ 17200 .....	1, 2

### **Rules**

Fed. R. Civ. P. 56(a), (c) .....	4
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### **Other**

Industrial Welfare Commission Order No. 9-2001.....	1, 5
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1 Defendant, Trimac Transportation Services (Western) Inc. (“Trimac”) respectfully submits  
 2 the following Memorandum of Points and Authorities in Support of its Motion for Partial Summary  
 3 Judgment on Plaintiff’s Meal Break Claims.

#### 4 **I. INTRODUCTION**

5 In his First Cause of Action, Plaintiff, Douglas Roberts (“Roberts”), asserts Trimac failed to  
 6 provide him meal periods under Cal. Lab. Code § 512.<sup>1</sup> In addition, Roberts’ Fourth Cause of  
 7 Action derivatively asserts an Unfair Competition Law (“UCL”) claim under Cal. Bus. & Prof.  
 8 Code §§ 17200, *et seq.*, for the same alleged meal break violations. Trimac is entitled to partial  
 9 summary judgment on both causes of action. Throughout Roberts’ entire employment, Trimac had  
 10 a valid meal and rest break policy that complied with California law. Roberts was aware of this  
 11 policy, admits he had time to take meal breaks, and admits he ate a meal every work day.  
 12 Nevertheless, Roberts claims that it was his “impression” from his training that Trimac did not want  
 13 its drivers to take meal breaks. But Roberts admits that no one at Trimac ever said anything to  
 14 Roberts to give him the impression that Trimac’s actual policy differed from its written policy, and  
 15 that no one at Trimac, including Roberts’ driver trainer, told Roberts he was not allowed to take a  
 16 meal break. Roberts notably never complained to anyone at Trimac that he was not able to take a  
 17 30-minute, duty-free meal break. In light of these undisputable facts, Trimac is entitled to summary  
 18 judgment on Roberts’ meal break claims.

#### 19 **II. STATEMENT OF ISSUES TO BE DECIDED**

20 1. Whether Trimac is entitled to summary judgment on Roberts’ First Cause of Action  
 21 alleging meal break violations and the part of his Fourth Cause of Action that is derivative of this  
 22 claim.

#### 23 **III. BACKGROUND FACTS**

24 Trimac is a federally-authorized interstate motor carrier that provides transportation solutions  
 25 to a variety of customers throughout the United States. *See Def.’s Request for Judicial Notice*

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26  
 27 <sup>1</sup> Wage Order No. 9-2001 is currently found at Cal. Code Regs. tit. 8, § 11090.

(ECF No. 33).<sup>2</sup> The bulk of Trimac's work in California consists of hauling hazardous materials to various customers both within and outside California. *See Defendant's Memo. of Points and Auth. in Support of Cross-Motion for Partial Summary Judgment* (ECF No. 44) at 7.<sup>3</sup> Roberts is a former truck driver for Trimac. *Pl.'s Memo. of Points & Auth. in Support of Plaintiff's Motion for Partial Summary Judgment* (ECF No. 27) at 1:21-22. Roberts filed a Complaint on October 15, 2012, against Trimac, asserting, *inter alia*, Trimac failed to provide him meal breaks in violation of the California Labor and Business and Professions Codes. *See* ECF No. 1.

Trimac has utilized a written meal break policy since 2008. *Deposition of Annelisa Shaw* ("Shaw Dep.") (attached hereto as *Exhibit A*) at 24:2-9, 26:10-12; 30(b)(6) *Deposition of Terry Gillit* ("Gillit Dep.") (attached hereto as *Exhibit B*) at 48:16-49:7; *Deposition of Douglas Roberts* ("Roberts Dep.") (attached hereto as *Exhibit C*), Ex. 10.<sup>4</sup> The policy explains employees are entitled to a 30-minute duty-free meal period, which the employees may take at any time. *Roberts Dep.*, Ex. 10; *Shaw Dep.* at 21:11-22:7 (describing policy). The policy also explains employees are entitled to a second 30-minute duty-free meal period if their work periods were for more than 10 hours. *Id.* Trimac also provided a California-specific addendum to its employee handbook that summarized its meal and rest break policy. *Gillit Dep.* at 49:19-21; *Roberts Dep.*, Ex. 11. Trimac had the same meal and rest break policy throughout Roberts' entire employment, *Shaw Dep.* at 24:2-9; 26:10-15 (testifying that Trimac's meal break policy was the same both before and after the written policy was utilized); *Gillit Dep.* at 48:16-49:7 (same), and the meal break rules were posted at the Santa Clara Branch during Roberts' employment. *Gillit Dep.* at 48:16-49:7. Copies of Trimac's meal break policies are acknowledged by employees and kept in the employees' personnel files. *Shaw Dep.* at 19:4-25.

At the Santa Clara Branch, Dan O'Connor has always informed the drivers of their right to meal breaks during the interview and orientation process, and O'Connor encouraged the drivers to

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<sup>2</sup> Plaintiff did not oppose Trimac's Request for Judicial Notice.

<sup>3</sup> Plaintiff did not dispute these facts.

<sup>4</sup> Deposition Exhibit 10 is a two-page document that was inadvertently marked in reverse order.

1 take their meal breaks on a daily basis. *Deposition of Dan O'Connor* (“O’Connor Dep.”) (attached  
2 hereto as *Exhibit D*) at 76:22-80:10, 83:10-84:11. The drivers were responsible for scheduling and  
3 taking their 30-minute meal break. *Roberts Dep.*, Ex. 10. Trimac provided a break room for the  
4 drivers to use to take their breaks, and O’Connor often supplied food for the drivers. *Deposition of*  
5 *Douglas Roberts, Amador v. Trimac Transportation Services (Western) Inc.*, Case No. CV10-4112-  
6 CHK(JCx) (“Roberts Amador Dep.”) (attached hereto as *Exhibit E*) at 45:1-47; *Roberts Dep.* at  
7 42:13-15 (admitting he ate in the break room); *O’Connor Dep.* at 87:22-88:5.

8 Roberts received a copy of Trimac’s meal and rest break policy. *Roberts Dep.* at 92:6-94:4,  
9 Ex. 10. Although Roberts reviewed and signed the document, *id.* at 92:18-24, Roberts testified he  
10 believed Trimac did not want him to take a 30-minute meal break because he believed Trimac  
11 wanted Roberts to get done with his work as quickly as possible. *Roberts Dep.* at 89:3-10, 94:6-13.  
12 Roberts claims to have formed this impression of Trimac’s policy during his training session with  
13 Bob Penicks (“Penicks”). *Id.* at 89:11-16. But Roberts admits Penicks never told Roberts that he  
14 could not take a meal break or that Trimac did not want Roberts to take a meal break. *Id.* at 89:15-  
15 22. Importantly, Roberts admits *no one* at Trimac ever told Roberts he was not allowed to take a  
16 meal break, *id.* at 68:22-24; 89:3-22, 94:18-24; *Roberts Amador Dep.* at 56:7-9, and that *no one* at  
17 Trimac ever said anything to Roberts to give him the impression that Trimac’s actual policy differed  
18 from its written policy. *Roberts Dep.* at 89:3-22, 94:21-24; *Roberts Amador Dep.* at 58:20-59:13.  
19 Despite Roberts’ claim that he did not take meal breaks due to the time pressures of the job, Roberts  
20 admitted he had time to take both meal breaks, *Roberts Dep.* at 91:4-92:4, and he admitted he ate a  
21 meal every day he worked. *Roberts Amador Dep.* at 52:7-9. Roberts notably never complained to  
22 anyone at Trimac that he was not able to take a 30-minute, duty-free meal break. *Roberts Amador*  
23 *Dep.* at 67:25-68:17, 101:9-18.

1 **IV. ARGUMENT**

2 **A. Standard**

3 As stated in the Court's April 9, 2013 Order on Plaintiff's Motion for Partial Summary  
4 Judgment (ECF No. 42):

5 "A motion for summary judgment should be granted if there is no genuine issue of material  
6 fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P.56(a), (c));  
7 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial  
8 burden of informing the court of the basis for the motion, and identifying portions of the pleadings,  
9 depositions, answers to interrogatories, admissions, or affidavits which demonstrate the absence of a  
10 triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to meet  
11 its burden, "the moving party must either produce evidence negating an essential element of the  
12 nonmoving party's claim or defense or show that the nonmoving party does not have enough  
13 evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire &*  
14 *Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

15 "If the moving party meets its initial burden, the burden shifts to the non-moving party to  
16 produce evidence supporting its claims or defenses. *See Nissan Fire & Marine Ins. Co., Ltd.*, 210  
17 F.3d at 1102. The non-moving party may not rest upon mere allegations or denials of the adverse  
18 party's evidence, but instead must produce admissible evidence that shows there is a genuine issue  
19 of material fact for trial. *See id.* A genuine issue of fact is one that could reasonably be resolved in  
20 favor of either party. A dispute is "material" only if it could affect the outcome of the suit under the  
21 governing law. *Anderson*, 477 U.S. at 248-49. "When the nonmoving party has the burden of proof  
22 at trial, the moving party need only point out 'that there is an absence of evidence to support the  
23 nonmoving party's case.'" *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting  
24 *Celotex Corp.*, 477 U.S. at 325). Once the moving party meets this burden, the nonmoving party  
25 may not rest upon mere allegations or denials, but must present evidence sufficient to demonstrate  
26 that there is a genuine issue for trial. *Id.*"



1           **B.       Roberts’ Meal Break Claim Fails As A Matter Of Law**

2           As recently explained by this Court, “[t]he California Labor Code prohibits employers from  
3           employing employees for a work period of more than 5 hours per day without providing those  
4           employees with a meal period of at least 30 minutes.” *Reece v. Unitrin Auto and Home Ins. Co.*,  
5           Cause No. 5:11-cv-03960 EJD, 2013 WL 2454452, at \*5 (N.D. Cal. January 22, 2013) (citing Cal.  
6           Labor Code § 512(a)) (other citations omitted); *see also* Wage Order No. 9-2001, Cal. Code Regs.  
7           tit. 8, § 11090. “The California Supreme Court has interpreted these statutes and orders as requiring  
8           employers to ensure only that these meal and break periods are made available to employees.” *Id.*  
9           (citing *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4<sup>th</sup> 1004, 1038-40, 139 Cal.Rptr.3d 315,  
10          273 P.3d 4513 (2012)). “An employee must show that the employer actually prevented the  
11          employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is  
12          insufficient. *Id.* (citing *Brinker*, 53 Cal.4<sup>th</sup> at 1040).

13          Here, the undisputed evidence establishes Trimac made meal breaks available to Roberts and  
14          therefore complied with California’s meal break rules. Specifically, it was Trimac’s policy during  
15          Roberts’ entire employment that employees were entitled to a 30-minute, duty-free meal break each  
16          work day and an additional meal break if the employee worked longer than 10 hours. *See Roberts*  
17          *Dep.*, Exs. 10-11; *Shaw Dep.* at 21:11-22:7, 24:2-9, 26:10-12; *Gillit Dep.* at 48:16-49:7, 49:19-21;  
18          *see also Shaw Dep.* at 24:2-9; 26:10-15 (testifying that Trimac’s meal break policy was the same  
19          both before and after the written policy was utilized); *Gillit Dep.* at 48:16-49:7 (same). Roberts  
20          received and reviewed a copy of Trimac’s policy, *Roberts Dep.* at 92:6-94:4, Ex. 10 and the meal  
21          break rules were posted at the Santa Clara Branch during Roberts’ employment. *Gillit Dep.* at  
22          48:16-49:7. Moreover, Dan O’Connor has always informed the drivers of their right to meal breaks  
23          during the interview and orientation process, and O’Connor encouraged the drivers to take their meal  
24          breaks on a daily basis. *O’Connor Dep.* at 76:22-80:10, 83:10-84:11. Trimac provided a break  
25          room for the drivers to use to take their breaks, and O’Connor often supplied food for the drivers.  
26          *Roberts Amador Dep.* at 45:1-47; *Roberts Dep.* at 42:13-15 (admitting he ate in the break room);  
27          *O’Connor Dep.* at 87:22-88:5. Simply put, Trimac satisfied its duty to “provide” meal breaks to  
28

1 Roberts under Cal. Labor Code § 512 and Wage Order No. 9-2001. *Reece*, 2013 WL 2454452, at  
2 \*5-\*6.

3 Roberts' claim that the pressures of his job prevented him from taking meal breaks does not  
4 save his claim from summary judgment. Roberts admits his driver trainer, Bob Penicks, never told  
5 Roberts that he could not take a meal break or that Trimac did not want Roberts to take a meal break.  
6 *Id.* at 89:11-22. Importantly, Roberts admits *no one* at Trimac ever told Roberts he was not allowed  
7 to take a meal break, *id.* at 68:22-24, 89:3-13, 89:17-22, 94:18-24; *Roberts Amador Dep.* at 56:7-9,  
8 and that *no one* at Trimac ever said anything to Roberts to give him the impression that Trimac's  
9 actual policy differed from its written policy. *Roberts Dep.* at 89:3-22, 94:21-24; *Roberts Amador*  
10 *Dep.* at 58:20-59:13. Despite Roberts claim that he did not take meal breaks due to the time  
11 pressures of the job, Roberts admitted he had time to take both meal breaks, *Roberts Dep.* at 91:4-  
12 92:4, and he admitted he ate a meal every day he worked. *Roberts Amador Dep.* at 52:7-9. Roberts  
13 notably never complained to anyone at Trimac that he was not able to take a 30-minute, duty free  
14 meal break. *Roberts Amador Dep.* at 67:25-68:17, 101:9-18. In sum, Roberts cannot designate any  
15 evidence that Trimac prevented or otherwise discouraged him from taking his meal breaks. *Reece*,  
16 2013 WL 2454452, at \*5-\*6.

17 In *Reece*, this Court granted the defendant employer's motion for summary judgment in  
18 virtually identical circumstances. In that case, the plaintiff worked as a material damage appraiser  
19 for an insurance company. 2013 WL 245452, at \*1. The plaintiff's job duties were to appraise and  
20 write repair estimates for damage to insured's and claimant's vehicles. *Id.* As an outside appraiser,  
21 the plaintiff worked in the field and from his home and did not report to an office. *Id.* As a remote  
22 and non-overtime exempt employee, the plaintiff was required to accurately record what hours he  
23 worked on an electronic time sheet, including overtime hours. *Id.* Upon his hiring, in a statement he  
24 signed and dated March 7, 2007, the plaintiff acknowledged reading, understanding, and agreeing to  
25 abide by the defendant's Employee Handbook, which included, *inter alia*, the company's meal break  
26 policy. *Id.* The defendant's policy required non-exempt employees like the plaintiff to take the  
27

1 required unpaid meal breaks during the workday. *Id.* The plaintiff sued for failure to provide meal  
2 breaks, and the defendant filed a motion for summary judgment. *Id.* at \*3.

3 The plaintiff argued he was unable to take meal breaks due to his demanding schedule  
4 reviewing claims in person and completing paperwork. *Id.* at \*6. He further argued the defendant  
5 “structured [his] workday so that it was . . . impossible for [him] to take meal breaks” and that the  
6 “sheer volume of plaintiff’s work and the expectations placed upon him made taking breaks  
7 physically impossible.” *Id.* Importantly, however, the plaintiff provided no evidence to support  
8 these conclusory allegations, and admitted he took meal breaks on a regular basis. *Id.* When asked  
9 if he ever saw or heard anything during his employment that led him to believe he was not allowed  
10 to take a meal period, the plaintiff responded, “No, no.” *Id.* The plaintiff also admitted that he never  
11 complained about missing meal breaks. *Id.* Noting that it would still not rise to the level of a  
12 violation of the labor laws even if the defendant’s agents were aware the plaintiff was not taking  
13 meal breaks, the court granted summary judgment in the defendant’s favor on the meal break claim.  
14 *Id.*

15 As the *Reece* decision instructs, Roberts cannot avoid summary judgment by unsupported  
16 and conclusory allegations that Trimac prevented or otherwise discouraged him from taking meal  
17 breaks. Because the designated evidence demonstrates Trimac made meal breaks available to  
18 Roberts throughout his entire employment, Trimac is entitled to summary judgment on Roberts’  
19 First Cause of Action. *Reece*, 2013 WL 2454452, at \*5-\*6; *see also Plaisted v. Dress Barn, Inc.*,  
20 2013 WL 300913, at \*2-4 (C.D. Cal. Jan. 25, 2013).

21 **C. Roberts’ Derivative UCL Claim Necessarily Fails**

22 As indicated above, a portion of Roberts’ UCL claim is derivative of Roberts’ meal break  
23 claim. Therefore, to the extent the Court grants Trimac’s summary judgment in Trimac’s favor on  
24 Roberts’ First Cause of Action, Trimac is also entitled to partial summary judgment on the portion of  
25 Roberts’ Fourth Cause of Action that is derivative of Roberts’ meal break claim.  
26  
27  
28

1 **V. CONCLUSION**

2 For all the foregoing reasons, Trimac respectfully requests the Court issue an order entering  
3 judgment in its favor on the First Cause of Action of Roberts' Complaint and on the Fourth Cause of  
4 Action to the extent it alleges a UCL claim derivative of the First Cause of Action.

5  
6 Dated: July 23, 2013

Respectfully submitted,

7  
8 /s/Christopher J. Eckhart

Christopher J. Eckhart

9 Christopher C. McNatt, Jr.

10 Attorneys for Defendant,  
11 Trimac Transportation Services  
(Western) Inc.

12  
13 **CERTIFICATE OF SERVICE**

14 I hereby certify that a copy of the foregoing was filed electronically on July 23, 2013. Notice  
15 of this electronic filing will be sent to the following parties of record by the operation of the Court's  
16 electronic filing system.

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21  
22 /s/Christopher J. Eckhart

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23  
24  
25 4850-4280-9876, v. 6